IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 17.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.834 of 2006

Kannagi ... Petitioner

Vs.

1.The State,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Magistrate and
District Collector,
Kancheepuram District,
Kancheepuram. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenu viz., Murugesan, son of Arjunan, who is now confined in Central Prison, Chennai in pursuance of the detention order passed by the second respondent on 14.08.2006 in BDFGISSV.No.48/2006 before this Court, call for the records, set aside the order and set the detenu at liberty forthwith.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Murugesan, who is detained as a "Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of

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1982), by the impugned detention order dated 14.08.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner has submitted that the detention order is liable to be quashed on the ground of non application of mind on the part of the detaining authority. While elaborating the above contention, the learned counsel for the petitioner has brought to our notice that though on the date of passing of the detention order, the bail application filed by the detenu in Crl.M.P.No.9357 of 2006 was pending before the Principal Sessions Court, Chengalpattu, the detaining authority proceeded as if that the detenu has not filed any bail application till the date of passing of detention order, which is incorrect. The learned counsel of the petitioner has placed the copy of the bail petition in Crl.M.P.No.9357 of 2006 and the endorsement made therein. A perusal of the endorsement shows that the said bail application was posted before the Principal Sessions Judge, Chengalpattu on 09.08.2006 and the learned Judge has ordered notice to the Public Prosecutor and posted the said application to 14.08.2006. Further, the endorsement on the docket of the said petition shows that notice was taken by the Public Prosecutor on 09.08.2006. It is relevant to note that the detention order was passed only on 14.08.2006. Inasmuch as the Public Prosecutor has taken notice in respect of the bail application in Crl.M.P.No.9357 of 2006 as early as on 09.08.2006, it is but proper on the part of the sponsoring authority to forward the said information to the detaining authority. When the bail application was pending before the competent Court, particularly, on the date when the detention order was passed, the detaining authority, while considering the eminent possibility, has proceeded that the detenu has not filed any bail petition, which is contrary to the information furnished before us. We are satisfied that failure to consider the relevant material vitiates the detention order. On this ground the detention order is liable to be quashed and accordingly, the same is quashed.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The District Magistrate and District Collector, Kancheepuram District,
Kancheepuram.

2.The Secretary to Government, Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

3. The Superintendent, Central Prison, Chennai.

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.S.Swamidoss Manokaran, Advocate Sr 48722

JRG (CO)
km/1.11.

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